

## Federal Housing Enterprise Oversight

## § 1705.2

normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by OFHEO at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) In reaching its decision, OFHEO shall review the dispute and shall consider its records and any documentation and arguments submitted by the debtor. OFHEO shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-OFHEO agent or other entities or persons acting on behalf of OFHEO, the debtor shall be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past due and legally enforceable to request review by OFHEO of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this part, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

## PART 1705—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

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AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 65 FR 26732, May 9, 2000, unless otherwise noted. Redesignated and amended at 65 FR 81328, Dec. 26, 2000.

### Subpart A—General Provisions

#### § 1705.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for award of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before OFHEO.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before OFHEO. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

#### § 1705.2 Definitions.

(a) *Adjudicative officer* means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

(b) *Adversary adjudication* means an administrative proceeding conducted by OFHEO under 5 U.S.C. 554 in which the position of OFHEO or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under 12 CFR part 1780. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will

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be an issue for resolution in the proceeding on the application for award.

(c) *Affiliate* means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

(d) *Agency counsel* means the attorney or attorneys designated by the General Counsel of OFHEO to represent OFHEO in an adversary adjudication covered by this part.

(e) *Demand of OFHEO* means the express demand of OFHEO that led to the adversary adjudication, but does not include a recitation by OFHEO of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

(f) *Fees and other expenses* include reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or project that is found by the agency to be necessary for the preparation of the eligible party's case.

(g) *Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Party* means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

(j) *Position of OFHEO* means the position taken by OFHEO in the adversary adjudication, including the action or

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failure to act by OFHEO upon which the adversary adjudication was based.

#### § 1705.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under § 1705.4(a), a party must be a small entity as defined in 5 U.S.C. 601.

(b)(1) To be eligible for an award of fees and other expenses for prevailing parties under § 1705.5(b), a party must be one of the following:

(i) An individual who has a net worth of not more than \$2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an “individual” rather than the “sole owner of an unincorporated business” if the issues on which the party prevails are related primarily to personal interests rather than to business interests.

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

(v) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than \$7 million and not more than 500 employees.

(2) For purposes of eligibility under paragraph (b) of this section:

(i) The employees of a party include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees shall be included on a proportional basis.

(ii) The net worth and number of employees of the party and its affiliates shall be aggregated to determine eligibility.

(iii) The net worth and number of employees of a party shall be determined as of the date the underlying adversary adjudication was initiated.

(c) A party that participates in an adversary adjudication primarily on